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FILED

JUL 27 2017

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

UN4 PRODUCTIONS, INC., Plaintiff, vs. BELINDA SANTIAGO, FRIEND OF CARLOS RAMIREZ, A MINOR. Respondent	Civil Action 17-cv-4861
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MOTION TO QUASH SUBPOENA

Dated this 27 of July, 2017.

NOW COMES DOES 1-23, user of IP addresses listed in subpoena, and for his/her Motion to Quash the Subpoena issued to Comcast Cable Communications, LLC ("Comcast") dated July 18th, 2017, states as follows:

1. DOES 1-23, as user of IP addresses listed in subpoena, requests that the Court quash the subpoena pursuant to Supreme Court Rule 201 (c) and pursuant to the Court's July 18th, 2017 Order. This motion is timely filed pursuant to the July 18th, 2017 Order granting DOES 1-23 14 days from receipt of notice to contest the subpoena. On or about July 24th, DOES 1-23 received notice of the subpoena to Comcast. A copy of the subpoena is attached hereto as Exhibit "1".
2. The subpoena should be quashed because it violates the Electronic Communications Privacy Act ("Privacy Act") codified at 18 U.S.C. § 2701-2703. The Privacy Act, at Section §2702, prohibits an entity that provides electronic communications services from divulging the contents of a communication while in electronic storage. 18 U.S.C. § 2702 (a)(1). The

Privacy Act only allows disclosure of customer information or records to a governmental entity pursuant to the specifically enumerated exceptions listed at § 2703, none of which apply here. Here, the subpoena seeks civil discovery prohibited by the Act. See *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606, 611-12 (E.D. Va 2008) (finding that the Privacy Act does not permit disclosure in response to civil discovery subpoenas).

3. Petitioner's subpoena to Comcast also violates Supreme Court Rule 224. Supreme Court Rule 224 does not provide for issuance of subpoenas to third-parties. Instead, Supreme Court Rule 224(a)(1) requires that the party seeking discovery file a verified petition naming the respondents from whom discovery is sought. Here, the Petition names only UN4 Productions, INC. Because the discovery is sought from Comcast, the subpoena does not comply with Supreme Court Rule 224.
4. Supreme Court Rule 224(a)(1)(i) permits discovery "for the sole purpose of ascertaining the identity of one who may be responsible in damages" Here, the subpoena issued to Comcast is overly broad as it seeks information beyond the identity of DOES 1-23. Specifically, the subpoena requests Comcast to "provide the name and current address of the people whose IP addresses are listed in the attached spreadsheet. We will provide data to you in the most efficient and cost-effective format if you inform us of your preferred format." Supreme Court Rule 224 allows discovery solely for ascertaining the identity of a person who may be responsible for damages. Any other information other than the identity of DOES 1-23 is beyond the scope of discovery under Supreme Court Rule 224.

WHEREFORE, DOES 1-23 respectfully requests that this Court quash the subpoena issued to Comcast.

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

UN4 PRODUCTIONS, INC.

Plaintiff

v.

DOES 1-23

Defendant

Civil Action No. 17-cv-4861

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Subpoena Compliance/Custodian of Records: Comcast Cable Communications Management, LLC, c/o The Corporation Company, 118 W. Edwards Street, Suite 200, Springfield, IL 62704

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: In accordance with the conditions of the attached Order, provide the name and current address of the people whose IP addresses are listed in the attached spreadsheet. We will provide data to you in the most efficient and cost-effective format if you inform us of your preferred format.

Place: Hughes Socol Piers Resnick & Dym, Ltd.
70 West Madison Street, Suite 4000
Chicago, IL 60602

Date and Time:

08/18/2017 10:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: JULY 18, 2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

UN4 Productions, Inc., who issues or requests this subpoena, are:

Michael A. Hierl, Hughes Socol Piers Resnick & Dym, Ltd., 70 West Madison Street, Suite 4000, Chicago, IL 60602;
mhierl@hsplegal.com; (312) 604-0067

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 17-cv-4861

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

<u>IP Address</u>	<u>HitDate/Time (UTC)</u>	<u>Port No.</u>
67.173.5.158	2017-04-08 11:53:04	16647
73.50.206.55	2017-04-08 12:11:02	6890
73.208.104.109	2017-04-08 12:38:06	49055
73.72.129.12	2017-04-08 12:41:20	23065
67.165.149.225	2017-04-08 12:43:05	52660
73.168.185.39	2017-04-08 12:43:50	38486
24.13.114.228	2017-04-08 12:58:12	51413
98.212.168.177	2017-04-08 14:08:59	55218
50.140.155.126	2017-04-08 15:21:15	21603
50.172.74.82	2017-04-08 15:43:53	32180
73.247.129.69	2017-04-08 16:01:18	16630
50.148.68.134	2017-04-08 16:20:07	14349
67.175.112.169	2017-04-08 17:09:13	52992
24.12.177.208	2017-04-08 17:22:37	40852
71.57.45.120	2017-04-08 18:23:35	6881
67.184.158.162	2017-04-08 20:58:07	18318
98.220.92.31	2017-04-08 21:22:07	22149
24.13.234.38	2017-04-08 21:56:24	59805
73.50.105.180	2017-04-08 22:18:37	31310
24.14.114.125	2017-04-08 23:12:01	63960
73.73.184.78	2017-04-08 23:49:31	6881
71.239.57.223	2017-04-08 23:50:45	26085
98.215.125.86	2017-04-08 23:53:53	48078